No. 80-1525

MAY 19 1981
ALEXANDER L. STEV
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Petitioner,

v.

GENERAL RAILWAY SIGNAL COMPANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

LEONARD PETKOFF
600 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 637-1465
Attorney for Petitioner
Washington Metropolitan
Area Transit Authority

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF AUTHORITIES

Cases	Page
Crown Coat Front Company v. *United States*, 386 U.S. 503, 87 S.Ct. 1177, 18 L. Ed. 2d 256 (1967)	4
United States v. *Callahan Walker Company*, 317 U.S. 56, 63 S.Ct. 113 87 L. Ed. 49 (1942)	2
United States Carlo Bianchi & Company, 373 U.S. 709, 83 S.Ct. 1409, 10 L. Ed. 2d 652 (1963)	1, 4
United States v. *Utah Construction & Mining Company*, 384 U.S. 394, 86 S.Ct. 1545, 16 L. Ed. 2d 642 (1966)	1, 4
Statutes	
United States Code, as amended,	
28 U.S.C. § 2501	4
Code of the District of Columbia, as amended,	
Statute of Limitations, Title 12 § 301	4
Interest on Judgment for Damages in Contract or Tort Title 15 § 109	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1525

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Petitioner,

v.

GENERAL RAILWAY SIGNAL COMPANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Petitioner submitted its Petition for Writ of Certiorari in order for this Court to determine whether the District Court in this case had abrogated two important principles of government contract law as enunciated in *United States* v. *Carlo Bianchi & Company*, 373 U.S. 709, 83 S. Ct. 1409, 10 L.Ed. 2d 652 (1963), and *United States* v. *Utah Construction and Mining Company*, 384 U.S. 394, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966), namely, that judicial review of an administrative decision must rest solely on the record made before the administrative tribunal and an adverse administrative finding may not be recharacterized as a breach of contract. Respondent's Brief in Opposition fails to address meaningfully either of these paramount questions inasmuch as it merely relates that Respondent did not proffer evidence at the second administrative hearing and that any distinction between a claim under a contract and a breach of contract is only a matter of semantics. Respondent overlooks the main issue raised by Petitioner, which is that Respondent is not entitled to an award of interest as part

of an equitable adjustment to its contract inasmuch as it did not present any evidentiary basis whatsoever as to entitlement thereto at the initial administrative hearing of its claims.

The issues during the first administrative hearing were twofold—(1) whether Appellant was entitled to recover on the merits of the disputes, and (2) whether Appellant was entitled to recover interest as a component of its claim for equitable adjustment as to each of three claims should it prevail administratively on the merits of the disputes.[1] The parties had stipulated the quantum of the equitable adjustment in the event of recovery by the contractor, with the sole exception of the claimed element of interest. This Court has long held that the determination of an equitable adjustment under a Government contract presents a factual issue. *United States* v. *Callahan Walker Company*, 317 U.S. 56, 61, 63 S. Ct. 113, 87 L.Ed. 49, 53 (1942).

Respondent omitted to adduce evidence regarding either its borrowings directly related to the changed work or the alleged unreasonable delay in the issuance of the Contracting Officers' final decisions. The administrative tribunal therefore resolved these factual matters adversely to Respondent in denying an award of interest. The BCA decided this issue solely on the basis of the evidence, and there is no suggestion in the administrative decision that it was based on the doctrine of sovereign immunity.[2] Petitioner simply contends that reversible error was committed when this denial was re-

---

[1] GRS also claimed interest as "an equitable adjustment of the contract price" in its complaint in the District Court (App. S paras. 16-27).

[2] The correctness of the BCA's decision in denying interest was demonstrated when Respondent's counsel admitted to the District Court: "I will straightforwardly say to the Court that General Railway Signal Company used its equity capital to finance these

characterized as a breach of contract and a second administrative hearing was ordered by the District Court to determine whether the contracting officer unreasonably delayed processing Respondent's claims.

During the *de novo* hearing ordered by the District Judge, Respondent had a full opportunity to adduce evidence, cross-examine witnesses, and argue a new theory of its case. Whether or not Respondent introduced new evidence is immaterial to the fact that Petitioner, by remand of the District Court, was twice placed at risk on the issue of interest entitlement.

Respondent has suggested that the District Court applied the Wunderlich standard of review. Brief in Opposition, p. 14. However, a reading of the opinions of the District Court reflects an absence of consideration as to whether the BCA's initial decision was fraudulent, capricious or arbitrary or so grossly erroneously as necessarily to imply bad faith, or is not supported by substantial evidence, nor is there a clear expression overruling the BCA on any pertinent legal issue. Since the equitable adjustment in the first administrative hearing involved a purely factual issue, the District Judge was required to determine whether the administrative decision did or did not meet these requirements. As this was not done, it is obvious that the District Court did not review the administrative decision in accordance with the limited judcial review accorded pursuant to Wunderlich Act principles, as mandated and agreed to by the parties in the Disputes article of their contract.

Respondent contends that there is no basic distinction between claims under a government contract and breaches

---

changes." Thus, Respondent never had any interest to claim as a cost of performing the work. Whether Respondent would have been entitled to compensation or an additional profit factor as part of an equitable adjustment for the use of its equity capital is a matter it never raised administratively. Addendum to Appendix G, p. 1a herein.

of contract and that all such claims are breach claims under D.C. Code § 15-109 (App. K). Brief in Opposition pp. 24, 25. However, this Court has stated:

> With respect to claims arising under the typical government contract the contractor has agreed in effect to convert what otherwise might be claims for breach of contract into claims for equitable adjustment. *Crown Coat Front Co.* v. *United States*, 386 U.S. 503, 511, 87 S. Ct. 1177, 18 L.Ed.2d 256, 263.

The "long established rule" concerning the application of the statute of limitations pertaining to contract claims, referred to by Respondent, is grounded in the "first accrual" language of 28 U.S.C. § 2501, which has no applicability to WMATA, an interstate compact agency (App. I)). However, the applicable D.C. statute, Title 12 § 301 D.C. Code, as amended, (App. J) provides a three-year limitation from the time the right to maintain the action accrues.

Lastly, Respondent suggests that the monetary value of its interest claim is not worthy of consideration by this Court. However, from a precedent standpoint, the rulings of the court below will seriously impact Petitioner's claims litigation and unnecessarily burden the Federal courts with cases which previously would have been resolved administratively.

Accordingly, this Honorable Court is requested to grant certiorari in order to reaffirm the principles set forth in *Carlo Bianchi*, *supra* and *Utah Construction*, *supra*.

Respectfully submitted,

LEONARD PETKOFF
600 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 637-1465
Attorney for Petitioner
Washington Metropolitan
Area Transit Authority

ADDENDUM TO APPENDIX G (APP. 39)

BY MR. EGGERS:

* * * *

[26] If, as he contends, the Bell case had eliminated the restrictive results arising from sovereign immunity, then we would not be in the situation that he contends we are, and that is with the failure of proof that there were specific interest costs incurred.

I will straightforwardly state to the Court that General Railway Signal Company used its equity capital to finance these changes.

General Railway Signal Company is a mature corporation that is in a cash producing phase of its business. It is [27] not running on substantial debt. It has some level of borrowings, but I think we can start with the proposition that equity capital was used to finance these changes.

* * * *